

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 201904736	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/06/2019 5:52 PM, Wednesday, 03/06/2019 6:15 PM	Location of Incident: § 87(2)(b); and PSA 8 Stationhouse	Precinct: 43	18 Mo. SOL 9/6/2020	EO SOL 4/23/2021	
Date/Time CV Reported Sun, 06/02/2019 11:58 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 06/02/2019 11:58 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Leon	19975	962545	PSA 8
2. POM Miguel Perea	19829	962678	PSA 8

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Deniston Williams	07208	937737	PSA 8
2. POM Michael Heinz	09897	953959	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Leon	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Leon stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.POM Miguel Perea	Abuse: At § 87(2)(b) in the Bronx, Police Officer Miguel Perea stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.POM Jose Leon	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Leon questioned § 87(2)(b)	§ 87(2)(b)
D.POM Jose Leon	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Leon frisked § 87(2)(b)	§ 87(2)(b)
E.POM Jose Leon	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Leon searched § 87(2)(b)	§ 87(2)(b)
F.POM Jose Leon	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Leon searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
G.POM Jose Leon	Abuse: At the PSA 8 stationhouse, Police Officer Jose Leon refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
H.POM Jose Leon	Abuse: At the PSA 8 stationhouse, Police Officer Jose Leon refused to provide his name to § 87(2)(b)	§ 87(2)(b)
I.POM Miguel Perea	Abuse: At the PSA 8 stationhouse, Police Officer Miguel Perea refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
J.POM Miguel Perea	Abuse: At the PSA 8 stationhouse, Police Officer Miguel Perea refused to provide his name to § 87(2)(b)	§ 87(2)(b)

Case Summary

On June 2, 2019, § 87(2)(b) filed this complaint with the CCRB via its website (Board Review 01). On December 4, 2019, this case was reassigned from Investigator Hannah Sampson to Supervising Investigator Jean-Paul Lozada.

On March 6, 2019, at approximately 5:52 p.m., Police Officer Jose Leon and Police Officer Miguel Perea of Police Service Area 8 (PSA 8) pulled over § 87(2)(b)'s vehicle in front of his house at § 87(2)(b) in the Bronx for a missing rear license plate (**Allegations A and B – Abuse of Authority: Vehicle Stop**, § 87(2)(g) Police Officer Leon asked § 87(2)(b) if he had “anything on [him] that [he is] not supposed to have” (**Allegation C – Abuse of Authority: Question**, § 87(2)(g) The officers ordered § 87(2)(b) out of his vehicle. § 87(2)(b) started his vehicle, pulled into his driveway, and then exited his vehicle. Police Officer Leon frisked § 87(2)(b) and searched his pockets (**Allegations D and E – Abuse of Authority: Frisk, Search of Person**; § 87(2)(g) While § 87(2)(b) stood at the rear of his vehicle, Police Officer Leon allegedly entered and searched the vehicle (**Allegation F – Abuse of Authority: Vehicle Search**, § 87(2)(g) § 87(2)(g).

The officers took § 87(2)(b) to the PSA 8 stationhouse, where § 87(2)(b) asked for the officers’ “cards, badge numbers, [and] names,” and Police Officer Leon said, “Everything’s gonna be on the summons you’re gonna get” (**Allegations G and H – Abuse of Authority: Refusal to Provide Shield Number**, § 87(2)(g) **Refusal to Provide Name**, § 87(2)(g) **Allegations I and J – Abuse of Authority: Refusal to Provide Shield Number, Refusal to Provide Name**; § 87(2)(g) Police Officer Leon wrote and released § 87(2)(b) from the stationhouse with two summonses for § 87(2)(b) and without any officer’s business card (Board Review 02).

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Body-Worn Camera (BWC) footage was obtained from the BWCs of Police Officer Leon (Board Review 03), Police Officer Perea (Board Review 04), and Police Officer Deniston Williams of PSA 8 (Board Review 05).

Findings and Recommendations

Allegation (A) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Leon stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Miguel Perea stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) provided a telephone statement on June 4, 2019 (Board Review 06) and was interviewed on June 12, 2019 (Board Review 07). § 87(2)(b)'s neighbor, § 87(2)(b) provided a telephone statement on July 8, 2019 (Board Review 08). Police Officer Leon was interviewed on February 6, 2020 (Board Review 09). Police Officer Michael Heinz of PSA 8 was interviewed on March 5, 2020 (Board Review 10).

It is undisputed that § 87(2)(b) was driving without a front license plate. Police Officer Leon stated that he did not issue § 87(2)(b) any traffic summonses because § 87(2)(b) is a taxi driver, and such a summons would have been a financial burden for him (“tough on his pockets”).

New York State Vehicle and Traffic Law 402 (Board Review 11) states that no one can drive or park a vehicle on public roads without license plates on both the front and rear of the vehicle.

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Allegation (C) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Leon questioned § 87(2)(b)

In Police Officer Leon's BWC footage (Board Review 03), at runtime 02:53, Police Officer Leon asks § 87(2)(b) "You got anything on you that you're not supposed to have?" and § 87(2)(b) says no. There was little substantive conversation between § 87(2)(b) and the officers before this moment, and Police Officer Leon had not yet asked § 87(2)(b) to exit his vehicle.

§ 87(2)(b) did not allege that Police Officer Leon asked him what he had on his person or in his vehicle. He did not describe his movements before he exited his vehicle. § 87(2)(b) did not recall any specific dialogue between § 87(2)(b) and the officers.

Police Officer Leon stated that he asked § 87(2)(b) this question because before § 87(2)(b) pulled over, he saw § 87(2)(b) move around in his seat. He believed § 87(2)(b) was "underneath his seat" and "shifting forward," and he demonstrated the movement by shifting his shoulders back and forth, but he emphasized that he was unable to recall or describe these movements in detail.

According to People v. Hollman 79 N.Y.2d 181, 1992, (Board Review 11), an officer cannot ask accusatory questions without founded suspicion of criminality. According to People v. Garcia 20 NY 3d 317, 2012, (Board Review 11), the framework presented in People v. Hollman for evaluating the constitutionality of police-initiated encounters with civilians applies equally to traffic stops as it does to street encounters. People v. Negroni 38 Misc. 3d 1224(A), 2013, (Board Review 11), citing People v. Garcia, states, "It is well-settled that furtive movements and nervous behavior, without more, cannot provide the police with a founded suspicion of criminality."

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Allegation (D) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Leon frisked § 87(2)(b)

Allegation (E) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Leon searched § 87(2)(b)

It is undisputed that Police Officer Leon asked § 87(2)(b) to exit his car, that § 87(2)(b) refused to do so for several minutes, that § 87(2)(b) started his car and pulled into his driveway before exiting his car, and that Police Officer Leon frisked § 87(2)(b) and searched his pockets after he exited his car.

In Police Officer Leon's BWC footage (Board Review 03), at runtime 03:32, Police Officer Leon says, "Get out of the car, I'll check if you have anything on you." § 87(2)(b) initially refuses to exit his car. He objects to Police Officer Leon searching his car and tells him to issue a summons for his missing license plate. Police Officer Leon says, "I want to check you," and posits that § 87(2)(b) may have a gun underneath his seat. The disagreement continues but does not escalate, and Police Officer Leon says, "I'ma pat you down real quick and then I'ma send you on your way, but if you keep being combative, alright, that's not gonna work out for you." At runtime 05:00, § 87(2)(b) starts his car and finishes pulling into his driveway, and he exits his car at runtime 06:04. At runtime 06:41, Police Officer Leon asks an officer, "You can take an OGA?" Police Officer Heinz replies, "I wouldn't," Police Officer Leon then frisks § 87(2)(b)'s legs and searches his right jacket pocket. The officers begin discussing bringing § 87(2)(b) to the stationhouse to issue him a "C" (a C-summons).

Before watching this video, Police Officer Leon stated that he wanted to frisk § 87(2)(b) before he pulled into his driveway, but he did not recall why. After watching it, he stated that he wanted to frisk § 87(2)(b) due to the movements he observed § 87(2)(b) make before he pulled over (see Allegation C). He further stated that at the moment he frisked and searched § 87(2)(b) he had already decided to arrest § 87(2)(b) for obstructing governmental administration for refusing to exit his vehicle after the initial vehicle stop and instead pulling into his driveway.

Patrol Guide Procedure 208-03 (Board Review 11) states that after an arrest has been effected, an officer must immediately field search and frisk the arrestee for weapons, evidence, and/or contraband.

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Allegation (F) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Leon searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that while he was standing at the back of his vehicle with Police Officer Williams, he turned around and saw Police Officer Leon's body "head-first" inside his vehicle. § 87(2)(b) believed Police Officer Leon was searching the area around the driver's seat, but he could not tell precisely what Police Officer Leon was doing.

§ 87(2)(b) did not see any officer search § 87(2)(b)'s vehicle.

Police Officer Leon stated that he did not enter or search § 87(2)(b)'s vehicle, and he did not recall whether any officer did so.

Police Officer Heinz stated that he did not see anything remarkable in § 87(2)(b)'s vehicle through the windows, and he did not recall whether Police Officer Leon entered the vehicle.

At runtime 02:53 of Police Officer Leon's BWC footage (Board Review 03), § 87(2)(b) says, "Y'all ain't searching my car." At runtime 07:75, Police Officer Leon is standing by § 87(2)(b)'s vehicle's open driver door when § 87(2)(b) moves to the back of his vehicle with the other

officers. Police Officer Leon remains standing by the open door and appears to bend at the waist for approximately five seconds, but he is not seen entering or reaching into § 87(2)(b)'s car. At the same moment (runtime 07:43) in a frame-by-frame viewing of Police Officer Perea's BWC footage (Board Review 04), a view of Police Officer Leon emerges from behind § 87(2)(b). Police Officer Leon's head and left hand are seen inside § 87(2)(b)'s driver door (Board Review 15). When Police Officer Leon retreats from the vehicle, he is seen holding an illuminated flashlight in his left hand (Board Review 16).

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An officer must have probable cause to believe that a vehicle contains evidence or contraband in order to conduct a warrantless search of the vehicle. Under the general automobile exception, officers may also conduct a limited search of a vehicle to retrieve a weapon if they reasonably believe that the weapon poses an immediate threat to their safety. Once the individual has been removed from the vehicle and no longer has access to the weapon inside the vehicle, this exception no longer applies. People v. Torres, 74 N.Y.2d 224, 1989 (Board Review 11).

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Allegation (G) Abuse of Authority: At the PSA 8 stationhouse, Police Officer Jose Leon refused to provide his shield number to § 87(2)(b)

Allegation (H) Abuse of Authority: At the PSA 8 stationhouse, Police Officer Jose Leon refused to provide his name to § 87(2)(b)

Allegation (I) Abuse of Authority: At the PSA 8 stationhouse, Police Officer Miguel Perea refused to provide his shield number to § 87(2)(b)

Allegation (J) Abuse of Authority: At the PSA 8 stationhouse, Police Officer Miguel Perea refused to provide his name to § 87(2)(b)

§ 87(2)(b) stated that both en route to and at the PSA 8 stationhouse, he asked Police Officer Leon and Police Officer Perea for their names and shield numbers, but neither officer responded.

§ 87(2)(b) asked them again at the stationhouse, and Police Officer Leon told him that all the information he needed would be on his summons. § 87(2)(b) asked Police Officer Perea for his business card, and Police Officer Perea replied, "What's that?" § 87(2)(b) stated that he did not ask Police Officer Leon for his business card. § 87(2)(b) stated that Police Officer Leon's name was not legible on the summonses he received, but at the time of his interview, he stated that he no longer had the summonses.

Police Officer Leon did not recall whether § 87(2)(b) requested his name, shield number, or business card. He noted that he was not obligated to provide a business card to § 87(2)(b) because he was arrested.

Police Officer Leon's BWC footage (Board Review 03) captures the entire journey from § 87(2)(b) to the PSA 8 stationhouse (beginning at runtime 09:30), and § 87(2)(b) does not request any officer's name or shield number en route to the stationhouse. At the stationhouse (runtime 23:44), before Police Officer Leon brings § 87(2)(b) from the front desk to the cell area, § 87(2)(b) says, "You guys got cards, right?" At this moment, Police Officer Perea is standing next to § 87(2)(b) and Police Officer Leon. He is not heard responding to § 87(2)(b) and his attention appears to be drawn elsewhere. Immediately after § 87(2)(b) makes this request, the audio is briefly obscured because the Police Officer Leon's BWC brushes against § 87(2)(b) resulting in a ruffling noise. § 87(2)(b) repeats his question, and Police Officer Leon replies, "What are you talking about?" § 87(2)(b) says, "Cards, badge numbers, names," and Police Officer Leon says, "Everything's gonna be on the summons you're gonna get." Police Officer Perea's BWC recording ends before this interaction (Board Review 04).

The handwritten summonses were requested from PSA 8 on June 11, 2019, and re-requested from PSA 8 on February 11, 2020. To date, no copies of the handwritten summonses have been received.

Patrol Guide Procedure 203-09 (Board Review 11) states an officer must "courteously and clearly state [his] rank, name, shield number and command, or otherwise provide them, to anyone who requests [him] to do so."

Patrol Guide Procedure 209-11 (Board Review 11) contains a graphic of a blank criminal court summons. The officer ("complainant") is afforded space to write his name and tax identification number, but not his shield number.

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- Police Officer Jose Leon has been a member-of-service for three years and has been a subject in two other CCRB complaints and seven other allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Miguel Perea has been a member-of-service for three years and has been a subject in one other CCRB complaint and six other allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- As of March 30, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 13).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 02

Investigator: SI Jean-Paul Lozada SI Jean-Paul Lozada 06/04/2020
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 6/5/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date